

§ 143-215.104K. (Expires January 1, 2022 – see notes) Liability protection.

(a) A potentially responsible party who enters into an assessment agreement or remediation agreement with the Commission and who is complying with the agreement shall not be held liable for assessment or remediation of areas of contamination identified in the agreement except as specified in the assessment agreement or remediation agreement, so long as any activities conducted at the contamination site by or under the control or direction of the petitioner do not increase the risk of harm to public health or the environment and the petitioner is not required to undertake additional remediation to unrestricted use standards pursuant to subsection (c) of this section. The liability protection provided under this Part applies to all of the following persons to the same extent as the petitioner, so long as these persons are not otherwise potentially responsible parties or parents, subsidiaries, or affiliates of potentially responsible parties and the person is not required to undertake additional remediation to unrestricted use standards pursuant to subsection (c) of this section:

- (1) Repealed by Session Laws 2007-503, s. 8, effective August 31, 2007.
- (2) Any future owner of the contamination site.
- (3) A person who occupies the contamination site.
- (4) A successor or assign of any person to whom the liability protection provided under this Part applies.
- (5) Any lender or fiduciary that provides financing to the petitioner to pay the petitioner's financial obligations under G.S. 143-215.104F.

(b) A person who conducts an environmental assessment or transaction screen on contamination resulting from a release at a certified facility or certified abandoned site consistent with a dry-cleaning solvent assessment agreement, if any was required under this Part, and who is not otherwise a potentially responsible party is not a potentially responsible party as a result of conducting the environmental assessment or transaction screen unless that person increases the risk of harm to public health or the environment by failing to exercise due diligence and reasonable care in performing the environmental assessment or transaction screen.

(c) If a land-use restriction set out in a Notice of Dry-Cleaning Solvent Remediation required under G.S. 143-215.104M is violated, the owner of the contamination site at the time the land-use restriction is violated, the owner's successors and assigns, and the owner's agents who direct or contract for alteration of the contamination site in violation of a land-use restriction shall be liable for remediation of all contaminants to unrestricted use standards. A petitioner who completes the remediation required under a dry-cleaning solvent remediation agreement or other person who receives liability protection under this Part shall not be required to undertake additional remediation unless:

- (1) The petitioner knowingly or recklessly provides false information that forms a basis for the remediation agreement or that is offered to demonstrate compliance with the remediation agreement or fails to disclose relevant information about contamination related to a facility or abandoned site.
- (2) New information indicates the existence of previously unreported dry-cleaning solvent contaminants or any other contaminants to be remediated under the remediation agreement, or an area of previously unreported contamination by contaminants addressed in the remediation agreement is discovered to be associated with the facility or abandoned site and has not been remediated to unrestricted use standards, unless the remediation agreement is amended to include any previously unreported contaminants and any additional area of contamination. If the remediation agreement sets maximum concentrations for contaminants and new

information indicates the existence of previously unreported areas of these contaminants, further remediation shall be required only if the areas of previously unreported contaminants raise the risk of the contamination to public health or the environment to a level less protective of public health and the environment than that required by the remediation agreement.

- (3) The level of risk to public health and the environment from contaminants is unacceptable at or in the vicinity of the contamination site due to changes in exposure conditions, including (i) a change in land use that increases the probability of exposure to contaminants at or in the vicinity of the contamination site; (ii) the failure of remediation to mitigate risks to the extent required to make the contamination site fully protective of public health and the environment as planned in the remediation agreement; or (iii) removal of a State or local land-use control.
- (4) The Commission obtains new information about a contaminant to be remediated under the remediation agreement and associated with the facility or abandoned site or exposures at or around the contamination site that raises the risk to public health or the environment associated with the contamination site beyond an acceptable range and in a manner or to a degree not anticipated in the remediation agreement. Any person whose use, including any change in use, of the contamination site causes an unacceptable risk to public health or the environment may be required by the Commission to undertake additional remediation measures under the provisions of this Part.
- (5) A petitioner fails to file a timely and proper Notice of Dry-Cleaning Solvent Remediation under this Part.
- (6) A facility or abandoned site loses its certification before the assessment and any remediation required under the provisions of this Part and the dry-cleaning solvent remediation agreement are completed to the satisfaction of the Department.
- (7) The remediation required in the remediation agreement has resulted in notification from the United States or its departments and agencies, including the Environmental Protection Agency, that the Department will violate the terms and conditions under which it operates and administers remedial programs by delegation or similar authorization. (1997-392, s. 1; 2001-384, s. 11; 2007-530, s. 8; 2009-483, s. 2.)